

**November 7, 2006**

**DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY**

**Appeal**

Name of Petitioner: Ed Donegan

Date of Filing: October 12, 2006

Case Number: TFA-0179

On October 12, 2006, Ed Donegan filed an appeal from a determination issued to him on September 28, 2006 by the Department of Energy's (DOE) FOIA/Privacy Group (FOIA/PA). In that determination, FOIA/PA responded to a request for documents that Mr. Donegan submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. FOIA/PA determined that it could not locate any records responsive to Mr. Donegan's request. This appeal, if granted, would require FOIA/PA to perform an additional search and either release any responsive documents or issue a new determination justifying the withholding of those documents.

**I. Background**

Mr. Donegan filed a request with FOIA/PA for documents regarding the Human Genome Project (HGP), a 13-year effort coordinated by the DOE and the National Institutes of Health (NIH). Specifically, Mr. Donegan sought documents related to (1) why the Human Genome Project (HGP) has "stonewalled" him on "requests for direction and assistance in writing grant requests"; (2) changes made to HGP documentation as a result of contacts from Mr. Donegan. Electronic mail from Ed Donegan to FOIA/PA (July 25, 2006).

FOIA/PA referred Mr. Donegan's request to the DOE's Office of Science. The Office of Science consulted Daniel Drell, Ph.D., a Program Manager in the Life and Medical Sciences Division of the Office of Science. According to Dr. Drell, while he may have previously been copied on an email Mr. Donegan sent to the NIH, he did not retain any such email, and is aware of no documents in the possession of the DOE that would be responsive to Mr. Donegan's request. In its determination letter, FOIA/PA informed Mr. Donegan that its search did not locate any documents responsive to his request and that he had the right to appeal the adequacy of the search to the Office of Hearings and Appeals. Letter from Abel Lopez, FOIA/PA, to Mr. Donegan (September 28, 2006) (Determination Letter).

Mr. Donegan then filed the present appeal, in which he states, "According to the typical empty letter I got in response to [my request], you never even bothered looking at NIH for any

documents, and you never made any effort to even look at my request about what to look for.” The issue before us is whether, in light of FOIA/PA’s search for responsive documents as described above, the search was adequate under the requirements of the FOIA.

In responding to a request for information filed under the FOIA, it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. United States Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). “The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. United States Department of State*, 779 F.2d 1378, 1384-85 (8<sup>th</sup> Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Ms. Doris M. Harthun*, 28 DOE ¶ 80,282 (2003).

## II. Analysis

As an initial matter, it is clear from Mr. Donegan’s appeal that the documents he is seeking may be in the possession of the NIH. However, the appellant is incorrect in implying that the FOIA requires the DOE to search for documents in another federal agency. If Mr. Donegan wishes to obtain documents from the NIH, he will need to file a FOIA request with the NIH directly. Information on filing such a request can be found at <http://www.nih.gov/icd/od/foia/>.

Regarding any documents responsive to Mr. Donegan’s request that may be in the possession of the DOE, we note that the appellant identifies no specific contacts that he made with the DOE. Nevertheless, the Office of Science has informed us that, if Mr. Donegan had contacted the DOE regarding the HGP, the person he most likely would have contacted would have been Dr. Drell, the DOE official to whom Office of Science referred Mr. Donegan’s request. Electronic mail from Daniel Drell, Ph.D., Program Manager, Life and Medical Sciences Division, Office of Science, to Steven Goering, Office of Hearings and Appeals (October 25, 2006).

By referring Mr. Donegan’s request to the DOE’s Office of Science, which consulted Dr. Drell as to his knowledge of any documents responsive to Mr. Donegan’s request, FOIA/PA has performed a search of the location where responsive documents were most likely to exist. We therefore conclude that the search was reasonably calculated to uncover the records Mr. Donegan sought. Accordingly, the present appeal should be denied.

It Is Therefore Ordered That:

(1) The Appeal filed on October 12, 2006 by Ed Donegan, OHA Case No. TFA-0179, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: November 7, 2006